RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

AARON M. BAILEY
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Washington, D.C. 20044
202-616-3366 (v)
202-307-0054 (f)
aaron.m.bailey@usdoj.gov

Of Counsel:
ANNETTE L. HAYES
United States Attorney

Attorneys for the United States of America

UNITED STATES DISCTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE UNITED STATES OF AMERICA,	)	
	)	Case No. 2:18-CV-754
	)	
Plaintiff,	)	**COMPLAINT**
	)	
v.	)	
	)	
MILLIMAN, INC.,	)	
	)	
Defendant.	)	
	)	

The United States of America states the following claims against the defendant:

Complaint

1

INTRODUCTION

1.   This is a civil action to collect from the defendant, Milliman, Inc. ("Milliman"), a liability imposed upon the defendant, pursuant to 26 U.S.C. § 6332(d)(1) for its failure or refusal to surrender property or rights to property that was subject to an Internal Revenue Service ("IRS") levy sent to MILLIMAN on December 5, 2016 to collect the liabilities of David and Elizabeth Dempsey ("the Dempseys"), for unpaid federal income tax liabilities for the tax periods ending December 31, 2011, December 31, 2012, December 31, 2013 and December 31, 2014.

JURISDICTION AND VENUE

2.   This action is commenced under section 7401 of the Internal Revenue Code, at the direction of the Attorney General of the United States and with the authorization of the Associate Area Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury.

3.   The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1340 and 1345 and 26 U.S.C. § 7402.

4.   Venue is proper within the Seattle Division of this judicial district pursuant to 28 U.S.C. § 1391(b) because it is the judicial district within which MILLIMAN has its principal place of business and a substantial part of the events or omissions which gave rise to the United States' claim in this action occurred within the boundaries of the Seattle Division.

COUNT I: JUDGMENT AGAINST MILLIMAN, INC. FOR FAILURE TO HONOR LEVY

5.   On the dates and in the amounts set forth below, a delegate of the Secretary of Treasury made timely assessments for unpaid federal income taxes (IRS Form 1040) against the

U.S.' Notice of Removal
(Case No.3:17-CV-05310)

2

U.S. DEPARTMENT OF JUSTICE
Tax Division, Western Region
P.O. Box 683
Washington, D.C. 20044
Telephone: 202-616-3164

1   Dempseys for unpaid federal income tax liabilities for the tax periods ending December 31,

2   2011, December 31, 2012, December 31, 2013 and December 31, 2014, as follows:

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Tax Year/Type	Assessment Date	Balance Due as of May 25, 2018
2011 - 1040	5/28/2012	$34,808.12
2012 – 1040	12/2/2013	$35,614.14
2013 – 1040	11/17/2014	$41,805.14
2014 – 1040	6/8/2015	$34,874.20

10   6.   The Dempseys incurred the liability for the 2011-2014 tax years as the result of

11   self-reported income taxes.

12   7.   Despite proper and timely notice and demand for payment of the assessments set

13   forth in paragraph 5, the Dempseys have failed or refused to fully pay this liability, as well as

14   interest and statutory additions.

15   8.   The Dempseys are jointly and severally liable for the tax liabilities set forth

16   above.

17   9.   Pursuant to 26 U.S.C. §§ 6321 and 6322, tax liens arose on the dates of

18   assessments in favor of the United States against all property and rights to property of the

19   Dempseys.

20   10.   Upon information and belief, Elizabeth Dempsey currently receives a monthly

21   salary from MILLIMAN and maintains a 401(k) retirement account through MILLIMAN.

22   11.   On or about December 5, 2016, the IRS issued and served by mailing to the

23   defendant, MILLIMAN, a Notice of Levy (Form 668-A) notifying it of the taxes due and owing

U.S.' Notice of Removal
(Case No.3:17-CV-05310)   3   **U.S. DEPARTMENT OF JUSTICE**
Tax Division, Western Region
P.O. Box 683
Washington, D.C. 20044
Telephone: 202-616-3164

1   from taxpayer Elizabeth Dempsey, with respect to the assessments described in paragraphs 5,

2   above, and demanding the surrender to the Secretary of the Treasury or his delegate of all of the

3   Dempseys' property or rights to property that MILLIMAN had or may have become obligated to

4   pay.

5   12.   At the time the Notice of Levy was served on December 5, 2016, MILLIMAN

6   paid Ms. Dempsey a salary of approximately $110,000.00 annually and maintained a 401(k)

7   retirement account for her benefit with a value exceeding $400,000. MILLIMAN refused and

8   continues to refuse to surrender certain amounts of the 401(k) account which the Dempseys have

9   purportedly authorized be surrendered to the United States.

10   13.   On or about December 28, 2016, the IRS issued and served by mailing to the

11   defendant, MILLIMAN, a Final Demand for Payment (Form 668-C) providing that if defendant

12   did not comply with the Notice of Levy within five days, then the Internal Revenue Service

13   would consider the failure to comply as a final refusal and may begin proceedings under 26

14   U.S.C. § 6332.

15   14.   Upon information and belief, after the date that the notice of wage levy was

16   served upon MILLIMAN, MILLIMAN made salary payments to Ms. Dempsey and continued to

17   maintain the 401(k) account in her name.

18   15.   Upon information and belief, after the date that the notice of wage levy was

19   served upon MILLIMAN, Ms. Dempsey alerted MILLIMAN that the wage levy was valid and

20   that she had no objection to its execution.

21   16.   MILLIMAN was required to surrender property belonging to Ms. Dempsey which

22   was the subject of the IRS's levy.

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U.S.' Notice of Removal
(Case No.3:17-CV-05310)   4   **U.S. DEPARTMENT OF JUSTICE**
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                                                                             Washington, D.C. 20044
                                                                             Telephone: 202-616-3164

1   17.   More than 21 days have passed since service of the Notice of Levy upon

2   MILLIMAN, the levy has not been released, and MILLIMAN has refused to surrender or pay

3   over to the United States (through the IRS) any property or rights to property held by

4   MILLIMAN for Ms. Dempsey.

5   18.   As a result of MILLIMAN's continuing failure to honor the aforesaid levy

6   described in paragraph 11, and surrender the property belonging to Ms. Dempsey, MILLIMAN

7   is liable to the United States, pursuant to 26 U.S.C. § 6332(d)(1) in a sum equal to the value of

8   the property or rights to property it failed to surrender.

9   19.   MILLIMAN has not raised a valid defense for its failure to honor the levy.

10   PRAYER FOR JUDGMENT

11   WHEREFORE, the plaintiff, the United States of America, prays as follows:

12   A.   The Court enter a judgment against the defendant, MILLIMAN, for the liability

13 imposed upon it pursuant to 26 U.S.C. § 6332(d)(1) for the amount MILLIMAN wrongfully

14 failed to turn over as a result of the levies;

15   B.   The Court award the United States its costs and any other relief that this Court

16 deems appropriate.

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U.S.' Notice of Removal
(Case No.3:17-CV-05310)

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U.S. DEPARTMENT OF JUSTICE
Tax Division, Western Region
P.O. Box 683
Washington, D.C. 20044
Telephone: 202-616-3164

1 DATE: May 25, 2018.

2   Respectfully submitted,

3   RICHARD E. ZUCKERMAN
                                         Principal Deputy Assistant Attorney General
4

5   s/ Aaron M. Bailey
                                         AARON M. BAILEY
6   Trial Attorney, Tax Division
                                         U.S. Department of Justice
7   P.O. Box 683
                                         Washington, D.C. 20044
8   202-616-3164 (v)
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9   aaron.m.bailey@usdoj.gov

10   Of Counsel:

11   ANNETTE L. HAYES
                                         United States Attorney
12
                                         Attorneys for the United States of America
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U.S.' Notice of Removal
(Case No.3:17-CV-05310)   6   **U.S. DEPARTMENT OF JUSTICE**
                                                             Tax Division, Western Region
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                                                             Telephone: 202-616-3164

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

❐ 1 U.S. Government Plaintiff

❐ 3 Federal Question *(U.S. Government Not a Party)*

❐ 2 U.S. Government Defendant

❐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❐ 1	❐ 1	Incorporated *or* Principal Place of Business In This State	❐ 4	❐ 4
Citizen of Another State	❐ 2	❐ 2	Incorporated *and* Principal Place of Business In Another State	❐ 5	❐ 5
Citizen or Subject of a Foreign Country	❐ 3	❐ 3	Foreign Nation	❐ 6	❐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
❐ 110 Insurance	**PERSONAL INJURY** **PERSONAL INJURY**	❐ 625 Drug Related Seizure of Property 21 USC 881	❐ 422 Appeal 28 USC 158	❐ 375 False Claims Act
❐ 120 Marine	❐ 310 Airplane ❐ 365 Personal Injury -	❐ 690 Other	❐ 423 Withdrawal 28 USC 157	❐ 376 Qui Tam (31 USC 3729(a))
❐ 130 Miller Act	❐ 315 Airplane Product Liability Product Liability			❐ 400 State Reapportionment
❐ 140 Negotiable Instrument	❐ 367 Health Care/		**PROPERTY RIGHTS**	❐ 410 Antitrust
❐ 150 Recovery of Overpayment & Enforcement of Judgment	❐ 320 Assault, Libel & Slander Pharmaceutical Personal Injury		❐ 820 Copyrights	❐ 430 Banks and Banking
❐ 151 Medicare Act	❐ 330 Federal Employers' Product Liability		❐ 830 Patent	❐ 450 Commerce
❐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	Liability ❐ 368 Asbestos Personal Injury Product Liability		❐ 840 Trademark	❐ 460 Deportation ❐ 470 Racketeer Influenced and Corrupt Organizations
❐ 153 Recovery of Overpayment of Veteran's Benefits	❐ 340 Marine ❐ 345 Marine Product **PERSONAL PROPERTY**	**LABOR**	**SOCIAL SECURITY**	❐ 480 Consumer Credit
❐ 160 Stockholders' Suits	Liability ❐ 370 Other Fraud	❐ 710 Fair Labor Standards Act	❐ 861 HIA (1395ff)	❐ 490 Cable/Sat TV
❐ 190 Other Contract	❐ 350 Motor Vehicle ❐ 371 Truth in Lending	❐ 720 Labor/Management Relations	❐ 862 Black Lung (923) ❐ 863 DIWC/DIWW (405(g))	❐ 850 Securities/Commodities/ Exchange
❐ 195 Contract Product Liability	❐ 355 Motor Vehicle Product Liability ❐ 380 Other Personal Property Damage	❐ 740 Railway Labor Act	❐ 864 SSID Title XVI	❐ 890 Other Statutory Actions
❐ 196 Franchise	❐ 360 Other Personal Injury ❐ 385 Property Damage Product Liability	❐ 751 Family and Medical Leave Act	❐ 865 RSI (405(g))	❐ 891 Agricultural Acts ❐ 893 Environmental Matters
	❐ 362 Personal Injury - Medical Malpractice	❐ 790 Other Labor Litigation		❐ 895 Freedom of Information Act
REAL PROPERTY	**CIVIL RIGHTS** **PRISONER PETITIONS**	❐ 791 Employee Retirement Income Security Act	**FEDERAL TAX SUITS**	❐ 896 Arbitration
❐ 210 Land Condemnation	❐ 440 Other Civil Rights **Habeas Corpus:**		❐ 870 Taxes (U.S. Plaintiff or Defendant)	❐ 899 Administrative Procedure Act/Review or Appeal of
❐ 220 Foreclosure	❐ 441 Voting ❐ 463 Alien Detainee		❐ 871 IRS—Third Party 26 USC 7609	Agency Decision
❐ 230 Rent Lease & Ejectment	❐ 442 Employment ❐ 510 Motions to Vacate Sentence			❐ 950 Constitutionality of State Statutes
❐ 240 Torts to Land	❐ 443 Housing/ Accommodations ❐ 530 General			
❐ 245 Tort Product Liability	❐ 445 Amer. w/Disabilities - Employment ❐ 535 Death Penalty	**IMMIGRATION**		
❐ 290 All Other Real Property	❐ 446 Amer. w/Disabilities - Other **Other:** ❐ 540 Mandamus & Other	❐ 462 Naturalization Application ❐ 465 Other Immigration Actions		
	❐ 448 Education ❐ 550 Civil Rights			
	❐ 555 Prison Condition			
	❐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

❐ 1 Original Proceeding
❐ 2 Removed from State Court
❐ 3 Remanded from Appellate Court
❐ 4 Reinstated or Reopened
❐ 5 Transferred from Another District *(specify)*
❐ 6 Multidistrict Litigation - Transfer
❐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

❐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ❐ Yes ❐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #   AMOUNT   APPLYING IFP   JUDGE   MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

	)	
	)	
	)	
	)	
Plaintiff(s)	)	
	)	Civil Action No.
v.	)	
	)	
	)	
	)	
	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____   _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE
(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

_____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: